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A massive expansion of government controls over private industry is clearly under way. Government officials are playing an ever larger role in what traditionally has been internal business decision-making. Yet the new wave of government regulation is not merely an intensification of existing activities; in good measure, it is a new departure.

The traditional notion of government regulation of business is based on the model of the Interstate Commerce Commission. Under this approach, a federal commission is established to regulate a specific industry, with the related concern of promoting the well-being of that industry. Often the public or consumer interest is subordinated, or even ignored.

In some cases -- because of the unique expertise possessed by the members of the industry or its job enticements for regulators who leave government employment -- the regulatory commission becomes a captive of the industry which it is supposed to regulate. At the least, this is a popularly held view of the development of the federal regulatory process. In addition to the ICC, other examples of this development which have been cited from time to time include the Civil Aeronautics Board, the Federal Communications Commission, and the Federal Power Commission.

The New Model of Government Regulation

Although that type of federal regulation of business surely continues, the new regulatory efforts established by the Congress in recent years follow, in the

main, a fundamentally different pattern. Evaluating the activities of these newer regulatory efforts with the ICC type of model is inappropriate and may lead to undesirable public policy.

The new federal regulatory agencies are simultaneously broader in the scope of their jurisdiction than the ICC-CAB-FCC-FPC model. Yet in important aspects they are far more restricted. This anomoly lies at the heart of the problem of relating their efforts to the national interest.

In the cases of the Environmental Protection Agency, the Equal Employment Opportunity Commission, the Consumer Product Safety Commission, the Federal Energy Administration, and the Occupational Safety and Health Administration, the regulatory agency is not limited to a single industry. In the case of each of these relative newcomers to the Federal bureaucracy, its jurisdiction extends to the bulk of the private sector and at times to productive activities in the public sector itself. It is this far-ranging characteristic that makes it impractical for any single industry to dominate these regulatory activities in the manner of the traditional model.

Yet in comparison to the older agencies, the newer federal regulators in many important ways operate in a far narrower sphere. That is, they are not concerned with the totality of a company or industry, but only with the segment of operations which falls under their jurisdiction. This limitation prevents the agency from developing too close a concern with the overall well-being of any company or industry. Rather, it can result in total lack of concern over the effects of its specific actions on a company or industry.

If there is any special interest that may come to dominate such an agency, it is the one that is preoccupied with its specific task -- environmental clean-up, elimination of job discrimination, establishment of safer working conditions,

reduction of product hazards, and so forth.

Thus, little if any attention may be given to the basic mission of the industry to provide goods and services to the public. Also ignored may be cross-cutting concerns or matters broader than the specific charter of the regulating agency, such as productivity, economic growth, employment, cost to the consumer, effects on overall living standards, and inflationary impacts. At times the process may seem to be epitomized by that proverbial dentist who sees his patient as merely two rows of teeth surrounded by a mass of miscellaneous material.

The result of the new approach to government regulation of business may be the reverse of the traditional situation. Rather than being dominated by a given industry, the newer type of federal regulatory activity is far more likely to utilize the resources of various industries, or to ignore their needs, in order to further the specific objectives of the agency. My personal study of the activities of these new regulatory agencies reveals many negative aspects of considerable importance.

To begin with, we must recognize that it is difficult to criticize their basic approach. One has to possess the personality of Scrooge to quarrel with the intent of the new wave of federal regulation -- safer working conditions, better products for the consumer, elimination of discrimination in employment, reduction of environmental pollution, and so forth. And the programs established to deal with these problems have at times yielded significant benefits.

But no realistic evaluation of the overall practice of government regulation comfortably fits the notion of benign and wise officials making altogether sensible decisions in the society's greater interests. Instead we find waste, bias, stupidity, concentration on trivia, conflicts among the regulators and, worst of all, arbitrary and uncontrolled power. These are not idle statements. Let me

cite chapter and verse to support them.

Waste in Government Regulation

Purchasers of new cars produced in the United States in 1974 paid over $3 billion extra for the equipment and modifications needed to meet federal requirements. Mandatory auto buzzers and harnesses (the widely detested "interlock" system) will rapidly fade into history due to recent congressional action, but not until after more than 40 percent of the owners of those expensive and annoying contraptions disconnected them or otherwise found ways of avoiding their use. Nevertheless, the phenomenon of government adding to the costs of private production is continuing.

The agencies carrying out federal regulation are proliferating. In the past decade alone, we have seen the formation of the Consumer Product Safety Commission, the Environmental Protection Agency, the Federal Energy Administration, the Cost Accounting Standards Board, the National Bureau of Fire Prevention, the Mining Enforcement and Safety Administration, the National Highway Traffic Safety Administration, and the Occupational Safety and Health Administration, to cite the better known ones.

The administrative cost of this army of enforcers (approximately $2 billion a year to support a regulatory workforce in excess of 63,000) represents but the tip of the iceberg. It is the costs imposed on the private sector that are really huge, the added expenses of business firms which must comply with government directives, and which inevitably have to pass on these costs to their customers. A direct cost of government controls is the growing paperwork burden imposed on business firms: the expensive and time-consuming process of submitting reports, making applications, filling out questionnaires, replying to orders

and directives, and appealing in the courts from some of the regulatory rulings. There now are 5,146 different types of approved government forms. Individuals and business firms spend over 130 million man-hours a year filling them out.

There is a great lack of understanding on the part of regulators of those they regulate. This is vividly conveyed in a conversation reported by a small manufacturer who attended a federal meeting on the paperwork burden. When he was advised not to worry about the matter personally but have his staff complete the forms, he replied, "When I attend this meeting the steff is right here with me. It's me."

A small, 5000 watt radio station in New Hampshire reported that it spent over $26 just to mail to the Federal Communications Commission its application for renewing its license -- and that was before the last rate increase. An Oregon company, operating three small televisions stations, reported that its license renewal application weighed 45 pounds. At the other end of the spectrum, one large corporation, with about 40,000 employees, uses 125 files drawers of back-up material just to meet the federal reporting requirements in the personnel area. The personnel manager contends that one-third of his staff could be eliminated if there were no government reporting requirements.

Another hidden cost of federal regulation is a reduced rate of technological innovation. The longer that it takes for some change to be approved by a federal regulatory agency -- a new product or a more efficient production process -- the less likely that the change will be made. Professor William Wardell of the University of Rochester Medical School has shown that as a result of the more liberal policy in the United Kingdom toward the introduction of new drugs, Britain has experienced clearly discernible gains by introducing useful new drugs, either sooner than the United States or exclusively. Professor Sam Peltzman of

the University of Chicago estimates that the 1962 amendments to the Food and Drug Act are delaying the introduction of effective drugs by about four years.

The private costs of government regulation arise in good measure from the attitudes of the regulators. To quote a member of the Consumer Product Safety Commission, "When it involves a product that is unsafe, I don't care how much it costs the company to correct the problem." Nobody can fault the Commission for not putting its money (and the public's) where its big mouth is. In one recent case where an offending company had not posted a label on its product bearing the correct officialese ("cannot be made non poisonous"), it was forced to destroy the contents. With little concern about costs, the commission apparently did not think about such economical solutions as pasting a new label on the can.

An expected result of the lack of attention to the costs of regulation is the opportunity for bureaucrats to engage in all sorts of exercises in trivia and on occasion sheer nonsense.

Consider the plight of the small businessman who tries to deal with the Occupational Safety and Health Administration (OSHA) rules without paying for expensive outside assistance. These are the kinds of questions that he must face: What size to establish for toilet partitions? How big is a hole? (it depends where it is). When is a roof a floor? What colors to paint various parts of a building? How feequently are spittoons to be cleaned? The public's taxes actually support people who are willing to establish and administer regulations dealing with these burning issues.

Let us start with a supposedly simple matter, the definition of an exit. The dictionary tells us that exit is "a passage or way out." For OSHA enforcers, defining exit is a challenge to their bureaucratic instincts and they are not found wanting. To OSHA, an exit is "that portion of a means of egress which is

separated from all other spaces of the building or structure by construction or equipment as required in this subpart to provide a protected way of travel to the exit discharge."

Obviously, you have to find out what is "a means of egress" as well as an "exit discharge." Exit discharge is defined merely as "that portion of a means of egress between the termination of an exit and a public way." But OSHA defines "a means of egress" as "a continuous and unobstructed way of exit travel from any point in a building or structure to a public way and consists of three separate and distinct parts: the way of exit access, the exit, and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, exits, escalators, horizontal exits, courts, and yards."

Unlike the dictionary, OSHA is unable to provide a definition of exit which does not contain the word exit in it. And exit is a comparatively easy one. Try ladder, where the reader literally has to cope with three renditions of the same tedious set of definitions plus one trigonometric function. The puzzlement over OSHA regulations extends to the chairman of the Occupational Safety and Health Review Commission, the independent agency created to hear appeals from rulings by OSHA inspectors. After citing one vague standard, he lamented:

> "What do you think it tells us to do?
>
> "I have no idea -- and I don't think OSHA could tell you either, before an inspection, citation, complaint, hearing and post-hearing brief.
>
> "I submit that there isn't a person on earth who can be certain he is in full compliance with the requirements of this standard at any particular point of time."

The operation of the Occupational Safety and Health Act provides a pertinent example of how government regulation can lose sight of the basic objective. A company, particularly a smaller one without its own specialized safety personnel, which invites OSHA to come to the plant to tell the management which practices need to be revised to meet the agency's standards instantly lays itself open to citations for infractions of the OSHA rules and regulations. The law makes no provision for so-called courtesy inspections.

In order to get around the problem,one regional office of OSHA has come up with a beautifully bureaucratic solution. They suggest that companies take photographs of their premises and send them to OSHA for off-site review. After all, if the inspectors do not actually "see" the violations, they cannot issue citations for them!

OSHA does not have a monopoly position in the realm of regulatory foolishness. An examination of the proposed Uniform Guidelines on Employee Selection Procedures is revealing. The Guidelines were drafted by the U.S. Equal Employment Opportunity Coordinating Council to assure that the procedures, in both the public and the private sectors, do not discriminate on the basis of race, color, religion, sex or national origin. The objective surely is worthy. Yet the specific guidelines which the Council has developed have been challenged by such professional organizations as the American Society for Personnel Administration and the American Psychological Association.

A mere reading of the proposed regulations reveals the basis for the concern. Smaller employers would have great difficulty in just understanding the regulations, while large and small companies alike would find it extremely difficult and expensive to comply. Even when the Coordinating Council tries to ease the burden on employers, the result challenges the understanding of the business

executive:

> "A selection procedure has criterion-related validity, for the purpose of these guidelines, when the relationship between performance on the procedure and performance on at least one relevant criterion measure is statistically significant at the .05 level of significance...If the relationship between a selection procedure and a criterion measure is significant but nonlinear, the score distribution should be studied to determine if there are sections of the regression curve with zero or near zero slope where scores do not reliably predict different levels of job performance."

Should these guidelines be enforced, the result is not likely to be fairer testing but a shift from what would become more costly and cumbersome procedures back to the simpler but far more bias-prone subjective oral interview.

The image of the all-wise and judicious government administration of controls is severely tested in practice. The responsibility for doing the basic research underlying new job safety and health regulations has been assigned to the National Institute of Occupational Safety and Health (NIOSH) in the Department of Health, Education, and Welfare. In early 1974, NIOSH signed an agreement with the Amalgamated Clothing Workers Union under which an official federal study of safety and health hazards in the clothing industry is conducted by a union employee and paid for by the union. In reporting this strange arrangement, OSHA noted that the union will help obtain the cooperation of plant managers. It is painful to contemplate the reaction of management to an investigation of its premises by its union in behalf of the government!

The double standard at times followed by federal regulators can be another cause for concern over the extent of the power entrusted to them. The Environmental Protection Agency is now studying the possible polluting which will be caused by the catalytic converters it has mandated for future automobiles. Government researchers have shown that the new "anti-pollution" equipment may

produce harmful amounts of sulphuric acid mists, which can irritate the lungs. Just think of the government and public outrage which would have resulted if a private business firm had taken such action prior to submitting a detailed environmental impact statement.

Conflicts Among Regulations

It is perhaps inevitable, but the proliferation of government controls has led to conflicts among controls and controllers. In some cases, the rules of a given agency work at cross purposes with each other. OSHA mandates back-up alarms on vehicles at construction sites. Yet simultaneously the agency requires employees to wear earplugs, to protect them against noise, that can make it extremely difficult to hear the alarms. More serious and more frequent are the contradictions between the rulings of two or more government agencies where the regulated have little recourse.

The simple task of washing children's pajamas in New York State exemplifies how two sets of laws can pit one worthy objective against another, in this case ecology versus safety. Because of a ban on phosphates in detergents, the mother who launders her child's sleepwear in an ecologically sound way may risk washing away its required fire-resistant properties.

In 1973, New York State banned the sale of detergents containing phosphates, in an effort to halt water pollution. Less than two months later, a federal regulation took effect requiring children's sleepwear to be flame-retardant. New York housewives now face a dilemma, because phosphates are the strongest protector of fire-retardancy. They hold soil and minerals in solution, preventing the formation of a mask on the fabric that would inactivate flame-resistancy. What does a conscientious mother do in a phosphate-banned area to avoid dressing her child in nightclothes that could burn up. Smuggle in the forbidden detergent?

Commit an illegal act of laundry?

The controversy over restrooms furnishes another example of the conflict among different regulations. It also demonstrates that common sense is in short supply in the administration of government controls. The Labor Department, in carrying out its weighty responsibilities under the Occupational Safety and Health Act, has provided industry with detailed instructions concerning the size, shape, dimensions, and number of toilet seats. For well-known biological reasons, it also requires some type of lounge area to be adjacent to women's restrooms.

However, the Equal Employment Opportunity Commission has entered this vital area of government-business relations. The Commission requires that male toilet and lounge facilities, although separate, must be equal to those provided to women. Hence, either equivalent lounges must be built adjacent to the men's toilets or the women's lounges must be dismantled, OSHA and state laws to the contrary notwithstanding. To those who may insist that nature did not create men and women with exactly identical physical characteristics and needs, we can only reply that regulation, like justice, must be blind.

Uncontrolled Power of Government Regulators

The instances of waste and foolishness on the part of government regulators pale into insignificance when compared to the arbitrary power that they can exert. To cite a member of the Consumer Product Safety Commission, "any time that consumer safety is threatened, we're going to go for the company's throat." That this statement is not merely an overblown metaphor can be seen by examining the case of Marlin Toy Products of Horicon, Wisconsin.

The firm's two main products, Flutter Ball and Birdie Ball, were plastic toys for children, identical except that one contained a butterfly and the other

a bird. The toys originally held plastic pellets that rattled. This led the Food and Drug Administration in 1972 to place the products on its ban list because it was worried that, if the toys cracked, the pellets could be swallowed by a child. The company recalled the toys and redesigned its product line to eliminate the pellets and thus be removed from the ban list.

The newly-formed Consumer Product Safety Commission in 1973 assumed responsibility in this area. Because of an "editorial error," it put the Marlin products on its new ban list, although there was no longer any reason to ban them. Apparently the Commission incorporated an out-of-date FDA list. The error was called to the Commission's attention, but it replied that it was not about to recall 250,000 lists "just to take one or two toys off."

Marlin Toy Products was forced out of the toy business and had to lay off 75 percent of its employees due to the federal error. It is ironic to note that the Commission specializes in ordering companies to recall their products if any defective ones have been produced, but refuses to recall its own product when there is a defect in every single one.

A more humorous instance of the CPSC's failure to abide by its own standards involves the toy safety buttons which it intended to distribute in the Fall of 1974 in an effort to make consumers more safety conscious. Only after producing 80,000 buttons did the Commission learn that its product was dangerous to children, because of the lead paint and the possibility of breaking off and swallowing pieces of the button. Unlike the procedures that it expects of the companies it regulates, the Commission presumably ran its tests after rather than before production. Fortunately, it realized its error prior to making public distribution of the buttons. Hence, "only" wastes of resources and tax dollars were involved.

Conclusion

This is not a general attack on all forms of government regulation. A society, acting through government, can and should act to protect consumers against rapacious sellers, individual workers against unscrupulous employers, and future generations against those who would waste the nation's resources. Thus, controls to avoid infant crib deaths can be advocated without supporting a plethora of detailed federal rules and regulations dealing with the color of exit lights and the maintenance of cuspidors.

Because of the very substantial costs and other adverse side-effects that they give rise to, society should take a new and hard look at the existing array of government controls over business. A substantial effort should be made to eliminate those controls that generate excessive costs. Rather than blithely continuing to proliferate government controls over business, alternative means of achieving important national objectives should be explored and developed, solutions that expand rather than reduce the role of the market.

A good beginning might be based on the environmental regulations themselves. In general, the society is supposed to examine the impact on the environment of the various actions that it takes. Would it not also be appropriate to require each environmental agency to assess the impacts of its action on the society as a whole and particularly on the economy? Surely a cleaner environment is an important national objective. But it is not the only national objective, and certainly society has no stake in selecting the most expensive and most disruptive ways of achieving its environmental goals.

Unpopular as it may be, I urge the same balanced attitude for the other new regulatory programs, including product safety, job health, equal employment, energy, et al. In a sense, I am proposing that public policy take the best from

both the old and the new models of government regulation of business. As in most things in life, the sensible questions are not matters of either/or, but rather of more or less and how. In this way, business can both help to achieve closer attainment of the nation's social goals while it achieves the basic economic function of more efficient production and distribution of goods and services.